

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	NO. 3:04-CR-240-G
	§	
HOLY LAND FOUNDATION FOR	§	
RELIEF AND DEVELOPMENT (1)	§	
also known as the "HLF"	§	
SHUKRI ABU BAKER (2)	§	ECF
MOHAMMAD EL-MEZAIN (3)	§	
GHASSAN ELASHI (4)	§	
HAITHAM MAGHAWRI (5)	§	
AKRAM MISHAL (6)	§	
MUFID ABDULQADER (7)	§	
ABDULRAHMAN ODEH (8)	§	

GOVERNMENT'S AMENDED NOTICE OF INTENT TO INTRODUCE EVIDENCE
PURSUANT TO RULE 807 OF THE FEDERAL RULES OF EVIDENCE

Pursuant to Rule 807 of the Federal Rules of Evidence, the government hereby notifies the Court and the defendants that it intends to offer into evidence the following records, which may not otherwise come under another hearsay exception¹:

¹ Rule 807. Residual Exception

A statement not specifically covered by Rule 803 or 804 but having equivalent circumstantial guarantees of trustworthiness, is not excluded by the hearsay rule, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

I. RECORDS SEIZED BY THE GOVERNMENT OF ISRAEL IN THE WEST BANK AND GAZA

The government has previously provided the defendants with approximately 21 binders of material received from the Government of Israel (“GOI”). A significant amount of the material consists of items seized by the GOI during military operations into the West Bank and Gaza, including Operation Defensive Shield. The material, which includes items such as posters, videos, correspondence, and lists seized from the zakat committees to which the HLF sent money, in addition to official documents created by the Palestinian Authority and seized from offices of the Palestinian Authority, will establish that the committees are controlled by Hamas. As discussed in a previous filing (Motion for Measures to Protect the Identity of Foreign Witnesses ecf 388) the government will authenticate the seized items through witnesses from the GOI.

It is the position of the government that the videos and posters seized from the zakat committees, as well as many of the documents seized from the committees, are not hearsay, as they are not being offered for the truth of their content, but are tangible items which will establish the zakat committees’ connection to Hamas.

Conversely, the government acknowledges that documents seized from offices of the Palestinian Authority, which specifically identify zakat committees controlled by Hamas and outside entities that provide financial support to Hamas, are being offered for the truth of their content, and are hearsay, as well as some of the correspondence and lists

seized from the zakat committees².

To the extent that any of the items seized from the zakat committees by the GOI are hearsay, or contain hearsay statements within them, and with regard to the documents seized from the offices of the Palestinian Authority, the government is hereby notifying the defendants that it will seek to offer into evidence the following documents pursuant to Rule 807 of the Federal Rules of Evidence:

<u>Exhibit Number and GOI bates numbers (if available)</u>	<u>Description</u>
	PA refers to Palestinian Authority PPS refers to Palestinian Preventative Security Service, a component of the Palestinian Authority.
6-1 (1842)	July 1, 1999 report from PA Preventive Security H.Q. in Bethlehem to PA Head of Security in Bethlehem. States that: Ghassan Hamas, from Bethlehem Orphans Care Society made contact with ICS-Hebron, which is represented by Sheik Adel Al-Jenedi from Hamas, who travels frequently abroad. ICS-Hebron receives aid from Interpal and WAMY, and supports the martyrs, prisoners and orphans of Hamas.
6-2	Sept. 2, 2002 letter to Yasser Arafat from PA Preventive Services in Gaza reporting a meeting between Issam Youssef and the Union of Good delegates from Jordan, and Islamic organizations in Yemen. Letter notes (in bold in the original) that the Coalition is considered from a financial perspective to be one of the biggest supporters of Hamas.

² The records seized from the Palestinian Authority would normally qualify as foreign public documents under Rule 803(8) of the Fed. R. Evid. However, due to the lack of relations with the Palestinian government, the government is unable to procure a witness to certify the documents as such.

6-3 (1820-22)	Document found in a file labeled " Hamas" in the PA General Security West Bank offices, discussing the sources of funding of Hamas inside and outside the Middle East. It states that 10% comes from the U.S., and specifically lists HLF and IAP as organizations supporting Hamas in the U.S. The document also discusses how Hamas uses committees, kindergartens, schools, sports teams, clinics, etc., and that it's not a coincidence that Hamas finds suicide bombers from within their schools and sports clubs.
6-4 (1791, 1816-1817)	Letter from the PA Preventive Security HQ in Bethlehem, to Muqaddam Abu Iyad, (dated July 10, 2000), with a list (on Vioxx notepaper) of the telephone no., fax and PO box of institutions abroad that provide financial support for Hamas charitable societies "inside." Includes Interpal, Al-Aqsa, GRF, and a Michigan group called Welfare of Life
6-5 (1843-45)	PA Preventive Security document (letter), attaching what the PA describes as 'internal circulars from the Hamas Movement Dawa Leadership that were distributed to Moslem Brotherhood activists in the Hamas movement.' The circulars describe the visit of Kaled Mashal to Saudi Arabia and the Hamas delegation to Egypt
6-6 (2089-90)	Document seized from ICS-Hebron. Talks about Jihad through charity, shows the importance of charity, and that an intrinsically political document was seized from a charity committee. Also discusses activities that Hamas wants to conduct circa January 2001.
6-7	PA intelligence document describing how the Hamas leadership is using its political infrastructure in the schools and in distribution of social services, and that this helps Hamas recruit Palestinian youth.
6-8 (1788)	Handwritten list of Hamas institutions in Ramallah-Al Bira that were closed the night of Eid (December 15, 2001) upon Arafat's instructions
6-9 (1796)	PA document dated December 12, 2001 ordering, based on Arafat's instruction, the closing of Hamas and PIJ civilian institutions listed on annex
6-10 (1795)	list of 5 institutions closed by PA, including Al-Islah and Islamic Charitable Society, Al-Bireh

6-11 (1787)	Handwritten list of Hamas institutions closed in Ramallah-Al Bira closed December 12, 2001
6-12 (1088)	Handwritten list of Hamas institutions closed in Ramallah-Al Bira closed December 12, 2001
6-13	Letter to Saudi Emir Sulayman bid 'Abd al-Aziz, from Abu Mazen, on behalf of Arafat, noting that large amounts of money from the Saudi Committee are going to committees controlled by Hamas instead of the PA, and asking the Emir's assistance in ensuring that the money goes to the control of PA and not to the detriment of Palestinian people
6-14 (1809 & 1811)	PA intelligence correspondence on how money collected for the Bethlehem Orphan Care Society is being transferred to Hamas
6-15	PA intelligence report re: Ramallah-Al Birah committee, identifying its methods and key officials as Hamas, and discussing activities
6-16	PA intelligence report about Hamas, containing discussion of Ramallah-Al Birah zakat committee, with list of important members and their affiliation with Hamas, and the Holy Land Foundation.
6-17 (1859)	PPS HQ document relaying report re: Orphan Care Society in Bethlehem, including types of activities it conducts, names of people who work there, and their affiliation to Hamas
6-18	Letter to head of PA General Intelligence for Ramallah-Al-Birah, identifying the Ramallah zakat committee as belonging to Hamas
6-19	political pamphlet describing the Hamas position toward the efforts of the West and the U.S. to make the Intifada fail, dated June 16, 2001. Two copies were seized from an orphans school belonging to ICS-Hebron
6-20	leaflet written Oct. 22, 2000, signed by Hamas and PIJ, giving instructions for the Intifada and vowing support for the martyrs. Seized from Jenin zakat committee on April 18, 2002.
6-21	internal Hamas document written May 23, 2004, with Hamas' stance on Israel's disengagement plan from Gaza. Seized from Jenin zakat committee on July 8, 2004.

6-22	document seized from ICS-Hebron, dated April 1, 2001. Shows political view of the “kutla” (Islamic student union) in the Polytechnic University. Says jihad and resistance are the only way to recover Palestinian rights to taken land, and that the path of Hamas is the right one
6-23	PPS document re: Union of Good and 101 day campaign
6-24	book entitled “Defending Muslim Land,” by Abdallah Azam
6-25	document seized from El-Islah committee listing the goals for summer camps, i.e., bringing the children spiritually closer to Islam and the holy war
6-26 (3610)	Letter re: summer camps, implementing changes in how summer camps should be described publicly
6-27 (2354-64)	documents seized from a computer at the Young Muslims Society in Hebron. They list various suicide attacks, with the number of injured for each incident, the highlights of the mission, and details of individuals involved.
6-28	handwritten list of martyrs from the Al-Aqsa Intifada, seized from the Jenin zakat committee, including martyrs from Jenin, and martyrs in the area of the Green Line, with cause of death. Among them are some suicide bombers.
6-29	Dec. 12, 1999 letter seized from ICS-Hebron. The letter sends greetings and a request to continue the support for prisoners and their families, and thanks the committee for its support. Signed by the Hamas Prisoners Committee
6-30 (3060-61)	Shaheed list seized from Al-Tadhamun. Lists shaheeds who died January - March 2002, including several suicide bombers
6-31	document seized from Al-Islah zakat committee (Ramallah) re: Sept. 1, 2001, list of prisoners and martyrs from the Jerusalem area whose houses were demolished or who were injured.

6-32 (2986-3019)	Al-Tadhamon shaheed files. Includes files of Mahar Mehi Aldin Kamal Havisha (suicide bomber from attack in Haifa on Dec. 2, 2001) and Amad Kamil Said Alzabedi (suicide bomber from Kfar Sabah attack on April 22, 2001)
6-33	reserved
6-34 (1862-61)	correspondence from PA ambassador in Riyadh, following up on request to better coordinate money from Saudi going into PA so as not to send money to Hamas committees. Talks about committee set up by Riyadh for this purpose.
6-35	reserved
6-36 (1877)	news article from Jan. 7, 2001 reporting that 123,750,000 Riyal was given to PA as aid to the families of the Intifada, and was transferred to needy families. Arafat wrote on the article, "Please inform me where did this money go to and who received it, since the martyrs and wounded received nothing"
6-37	a report about allocation of money to charity associations, with the logo International Islamic Relief Committee (IIRO) and listing 9 committees in West Bank, and 5 in Gaza, all of which are affiliated with Hamas
6-38	reserved
6-39 (1126)	Dec. 10, 2000 PA intelligence report to Arafat reporting from the Lebanese arena about Hamas/Iz Al-Din AlQassam brigades. Reports that \$400,000 from Marzook was sent for operations against Israel but had not reached its destination; Hamas has green light to carry out attacks. Also says charity donations would be not be sent to PA, but to Khalid Mashal and Usama Hamdan to support military activities "inside"
6-40	reserved
6-41 (2399)	Dec. 1, 2001, thank you letter seized from the Jenin zakat committee re: project involving Interpal, Al-Aqsa, CBSP, among others.
6-42 (2423)	Orphan's list seized from Jenin zakat

6-43 (3200-02)	Three orphan forms seized from Qalqilya zakat
6-44 (2523)	Letter conveying information for the transfer of funds to Jenin zakat and Al-Razi Hospital
6-45	reserved
6-46	reserved
6-47 (6754)	HLF letter to Young Muslim Society dated July 17, 2001, re: support for summer camp
6-48	PA document discussing the Holy Land Foundation, seized from the PA Headquarters in Ramallah
6-49 (1815)	PA document re: Hamas fund-raising activities and members including Ghassan Hamas in Bethlehem Orphans Society, dated January 7, 1999
6-50 (1834-35)	Letter from PA re: activity of Hamas member after being released from prison
6-51	PA document seized from PA headquarters in Ramallah discussing the HLF and some of its members, dated December 22, 2001.
6-52 (1121-22)	Letter from PA Bethlehem concerning the distribution of sacrifices through the Orphan's Care Society, dated September 8, 1998
6-53 (3880-81)	Letter from PA Bethlehem concerning Hamas fund-raising within Israel
6-54 (3910)	PA document re: dispute between Hamas members in Bethlehem
6-81	Pamphlet entitled "Before it is Destroyed" by Abd-al Aziz Mustafa, seized from ICS-Hebron.

II. FOREIGN BANK RECORDS

The government received records from the Bank of Palestine pursuant to 31 U.S.C. § 5318, which required the Bank of Palestine to provide records requested in an administrative summons.³ The Bank of Palestine complied with the summons but, unlike other foreign banks that provided records pursuant to a compulsory process, did not provide a certification that would satisfy Fed. R. Evidence 803(6) and 903(2), and 18 U.S.C. § 3505. Therefore, the government will seek admission of bank records from the HLF account number 40099101377 at the Bank of Palestine, Gaza branch, through Rule 807 of the Fed. R. of Evidence.

³ (3) Foreign bank records.--

(A) Summons or subpoena of records.--

(i) In general.--The Secretary of the Treasury or the Attorney General may issue a summons or subpoena to any foreign bank that maintains a correspondent account in the United States and request records related to such correspondent account, including records maintained outside of the United States relating to the deposit of funds into the foreign bank. 18 U.S.C. § 5318(k)(3).

The government will submit a further supplemental notice if it identifies additional documents it may seek to offer into evidence under this rule.

Dated: May 29, 2007

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2007, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

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